## Remarks/Arguments

The rejection of Claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Batish et al. in view of Dickson et al. is respectfully traversed. Batish discloses lactoferrin purified from buffalo's colostrum as having antibacterial activity on six of seven cultures of pathogenic organisms tested. As stated by the Examiner: "Batish does not disclose that these potentially food-borne pathogenic organisms could contaminate a meat product." Dickson et al. discloses results from a study of bacterial attachment to meat surfaces and "(t)he object of this study was to determine the relationship between cell surface charge and bacterial attachment to meat surfaces." There is no disclosure in Dickson et al. of the use of any material to reduce microbial contamination of the meat product. The Examiner's assertion that there is *prima facie* obviousness is clearly in error since it is totally lacking from any teaching or disclosure found in the references. The operative step of "treating meat product with a sufficient amount of lactoferrin..." is not found in the references. . No evidence from the two references indicates that the one skilled in the art looking at the complete disclosures of the references cited would find Applicant's invention obvious, let alone have a clue to the inventions recited in the claims of Applicant. Therefore the rejection is in error and should be withdrawn. . It is further noted, the claims as amended are directed to lactoferrin selected from the group consisting of bovine, human, and recombinant human lactoferrin, and not buffalo lactoferrin.

There is no evidence cited by the Examiner of "The economic and public

health desire..." on which the Examiner arrives at the unfounded conclusion the claims are *prima facie* obvious. This conclusion is clearly in error since it is made without any evidence, any reference or patent to refute. For this reason the rejection is in error because of an incorrect and unfounded assertion and the rejection should be withdrawn.

The Examiner further states: "It would also be *prima facie* obvious to dissolve the lactoferrin in other nutritionally acceptable carriers before applying it to a food product intended for human consumption, such as meat." This further assertion of "*prima facie* obvious" is totally unfounded. The Examiner goes further to state that lactoferrin is a solid. While technically true with regard to commercially available lactoferrin)s), the reference fails to disclose this fact and whether a solid buffalo lactoferrin is ever obtained is not known. The Examiner then states: "the assay medium (page 18) used by Batish to dissolve the lactoferrin in meets the limitations of both a carrier and a nutritionally acceptable carrier..." This assertion is unwittingly wrong. A carrier and especially a nutritionally acceptable carrier, as used in the claims of the present application and in US 6,172,040, are materials that after treating the meat are harmless to a person eating the meat. To use an assay medium as disclosed in Batish is not logical to one skilled in the art for the treatment of meat to reduce microbial contamination. By definition, the assay medium of Batish is a fluid for growing bacteria. The rejection should be withdrawn since it is wrong and there is insufficient evidence supplied by the Examiner for the assertions made. .

It is **further** respectfully submitted that the rejection is clearly unwarranted

and in error because of an inconsistent and biased prosecution of this application. This application was filed **December 18, *2001*** for the purposes of an interference with US Patent 6,172,040 of A. Satyanarayan Naidu. On May 3, 2004, all claims in the present application were found allowable and "due to a potential interference, ex parte prosecution was suspended." Applicant had to believe that the potential interference was with the Naidu patent. Now three and one-half years after filing, the allowance of the claims is withdrawn and art applied. It is submitted that the rejection is being unwittingly based on the teachings of the Naidu patent without citing this patent as a reference. What was not obvious to one skilled in the art until the Naidu patent is now asserted by the Examiner as *prima facie* obvious, not by the references cited but from the disclosure of the Naidu patent. It is clear that this non-cited reference is the basis for the Examiners statement: "It would also be *prima facie* obvious to dissolve the lactoferrin in other *nutritionally acceptable* carriers before applying it to a food product intended for human consumption, such as meat." The idea of using lactoferrin in a carrier for the treatment of meat is taken from the Naidu patent and the specific language, "nutritionally acceptable carrier" was suggested by the Examiner (see Page 3 of the Office Action of 01/13/2004) for the purposes of the interference. However, the Naidu patent can not be a reference against the present application since it has a filing date some eight plus **(8+)** years after the effective date of this application. The error is the unwitting use of the teachings of a non-cited reference to provide the basis for a conclusion of *prima facie* obviousness. For this reason the rejection is clearly in error and should be

withdrawn.

The Examiner is requested to reconsider the rejection especially in view of the amendments made to the claims. The rejection should be withdrawn and the claims allowed.

The rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Batish et al. in view of Stiles et al. is respectfully traversed. The Stiles et al. reference does disclose E. coli in meats or on meat surfaces; however, the Dickson et al. reference also discloses E. coli. There is no disclosure in either the Batish et al. or the Stiles et al. article that suggests "***treating the meat product***" with a material having antibacterial activity; therefore the combined references fail to provide evidence of *prima facie* obviousness. The rejection fails for the same reasons given above with respect to the proposed combination of Batish et al. in view of Dickson et al.

The rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Batish et al. in view of Ryser et al. is respectfully traversed. There is no disclosure in either the Batish et al. or the Ryser et al. article that suggests "***treating the meat product***" with a material having antibacterial activity; therefore the combined references fail to provide evidence of *prima facie* obviousness. The rejection fails for the same reasons given above with respect to the proposed combination of Batish et al. in view of Dickson et al. or Batish et al. in view of Stiles et al.

The rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Chander et al. in view of Dickinson et al. is respectfully traversed. There is

no disclosure in either the Chander et al. or the Dickinson et al. article that provides evidence of *prima facie* obviousness, since as the Examiner admits Chander et al. discloses nothing about meat and the Dickinson article fails to disclose any method for "treating the meat product" with any material to reduce microbial contamination. It is respectfully submitted therefore that the references fail to disclose the operative step recited in Applicant's claims: namely, "***treating the meat product***" with lactoferrin; therefore the combined references fail to provide evidence of *prima facie* obviousness. The Examiner again asserts that: "The economic and public health desire..." provides evidence of *prima facie* obviousness; however, this conclusion is clearly in error since it is made without any evidence, any reference or patent to refute. It is respectfully submitted that this conclusion is a hindsight conclusion since it is not based on the references teachings or cited evidence but only on the Examiners looking at the references on the basis of knowledge he has today, and this hindsight conclusion is not proper; therefore the rejection should be withdrawn. This hindsight perspective is further emphasized in the Examiner's statement: "Because lactoferrin is a solid protein in its natural state.... It would also be *prima facie* obvious to dissolve the lactoferrin in other nutritionally acceptable carriers before applying it to a food product intended for human consumption such as meat." This hindsight comes directly from US Patent 6,172,040 which was brought to the Examiner's attention by Applicant in an attempt to provoke an interference. The Examiner is wrongly using this knowledge of the US Patent 6,172,040 as a reference; however, this patent can not be a proper reference. Further, it must be noted that the "growth

medium" mentioned on page 418 of Chander et al. is unidentified but is a medium for growing the micro-organisms which is counter-productive as a carrier in the method recited in the Claims herein. The Examiner fails to provide evidence of *prima facie* obviousness. The Examiner wrongly uses the knowledge of the US Patent 6,172,040 as a reference and make hindsight conclusions. Therefore, the rejection is improper and should be withdrawn.

The rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Chander et al. in view of Stiles et al. is respectfully traversed. It is respectfully submitted that neither of the references disclose the operative step recited in Applicant's claims: namely, "***treating the meat product***" with lactoferrin, or with any material having antibacterial activity; therefore the combined references fail to provide evidence of obviousness. The Examiner's statements regarding the "economic and public health" and the reference to the "grow medium" of Chander et al. show the repeated error of hindsight and technical error that are the same as have been used clearly in error above.

Applicant has responded to each and every ground of rejection and respectfully submits that each ground of rejection has been shown to be in error and the rejections should be withdrawn. Applicant respectfully requests that a timely Notice of Allowance be issued in this Application.

Respectfully submitted,

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CERTIFICATE OF MAILING

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I hereby certify that this Petition for Extension of Time is being deposited with the U.S. Postal Service as Express Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 8, 2005.

Kurt S. Myers